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(Course No. LAW300H1S)

Spring 2007

MATERIALS

Faculty of Law
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[1] This short excerpt from a longer work summarizes and encapsulates the major insights from the preceding pieces in this section. Consider it optional reading if you have read the preceding pieces in this section.

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[2] A play on "*deus ex machina*" or "god from the machine" — an improbable plot device that resolves a difficult situation. "*Pretia*" roughly translates to "prices".

Reputation

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John C. Coffee, Jr, *Understanding Enron: "It's About the Gatekeepers, Stupid"*, 57 BUSINESS LAWYER 1403 (2002) 329